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No. 01-896

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY and
CITIBANK (SOUTH DAKOTA), N.A.,

Petitioners,

v.

JOHN B. McCAULEY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether a class action lawsuit seeking damages and injunctive relief may be heard in federal court where, from the face of the complaint, the potential award of damages for "separate and distinct" claims could not possibly exceed the per plaintiff $75,000 amount-in-controversy requirement imposed under 28 U.S.C. § 1332, but where the injunctive relief requested, if granted, would impose administrative costs on one of the defendants in excess of $75,000.

STATEMENT PURSUANT TO RULE 29.6

Respondents are individuals and thus have no corporate parents and do not issue stock.

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STATEMENT OF THE CASE

This case concerns a class action involving parties of different states[1] and "separate and distinct" claims of individuals brought exclusively under state law. In *Snyder v. Harris*, 394 U.S. 332 (1969), and *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), this Court held that Rule 23 did not alter the long-standing traditional rule that "separate and distinct claims of two or more plaintiffs cannot be aggregated in order to satisfy the jurisdictional amount requirement" of the diversity statute. 394 U.S. at 334; 414 U.S. at 294. In contrast, where "several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest," their claims may be aggregated to reach the jurisdictional threshold. *Zahn*, 414 U.S. at 294.

In this case, there is no dispute that Respondents' ("Plaintiffs") underlying claims are "separate and distinct," J.A. 113, nor is there any dispute that this case was brought as a class action and thus is governed by the non-aggregation principle confirmed by this Court in *Snyder* and *Zahn*. In addition to compensatory damages, however, Plaintiffs prayed for injunctive relief. Petitioners contend that the plaintiffs have a "common and undivided" interest in the prayed for relief. Pet. Br. at 26-31. Admittedly, this Court has not spoken conclusively about how to value the amount-in-controversy in the class action context where, like here, injunctive relief is requested as the surrogate through which the "separate and distinct" damage claims can be realized. Yet, there is no doubt that "[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Washington State Apple Adver. Comm'n*,

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1. It is undisputed that the parties are completely diverse. J.A. 112. References to the Joint Appendix in this brief are abbreviated to "J.A.".

432 U.S. 333, 347 (1977). Here, the value of the "object of the litigation" is less than $75,000 per plaintiff. J.A. 95, 97, 118.

The genesis of this action arises from Ford Motor Company's ("Ford") and Citibank (South Dakota), N.A.'s ("Citibank") termination of a credit card rebate program ("Rebate Program"). In each of the six original actions, Plaintiffs filed their cases under state law asserting state law claims in the state courts of Washington, Oregon, California, Illinois, Alabama and New York. J.A. 109. Generally, Plaintiffs alleged that Ford and Citibank breached their contractual obligation to allow plaintiffs to obtain monetary rebates payable towards the purchase or lease of certain Ford vehicles from their use of the co-branded Ford/Citibank credit card. J.A. 57-58. Plaintiffs further alleged that the ability to obtain rebates was part of the promised consideration owed to plaintiffs for choosing the Ford/Citibank credit card as opposed to the many other cards available on the market. J.A. 51-53. Plaintiffs also alleged that Petitioners' conduct, in terminating the program after duping Plaintiffs and the class into obtaining and using the card, constituted an unfair and deceptive trade practice for which Petitioners are liable for damages under the consumer laws of the various states. J.A. 59-61.

Petitioners removed each case to federal court and petitioned the Judicial Panel on Multidistrict Litigation ("MDL Panel") to consolidate the cases for pretrial proceedings under 28 U.S.C. § 1407. J.A. 109. The MDL Panel granted the petition, plaintiffs consented to the transfer, and all cases were transferred to the Western District of Washington. J.A. 31-32. The district court received the cases for limited, pretrial purposes. *Id.*

In the Case Management Order proposed by the parties, the district court noted that the cases were "consolidated for pretrial purposes," and ordered that "a consolidated complaint" — if one was to be filed — must "be filed within fifteen (15) days after this Order becomes effective." J.A. 41, 44. Although Plaintiffs recognized that they could have, in good faith, challenged the district court's jurisdiction, they made a strategic decision not to engage in a protracted jurisdictional battle that would drain plaintiffs' resources and delay pursuit of the merits of plaintiffs' claims. J.A. 70. Moreover, to further streamline the pretrial proceedings, the plaintiffs filed a single, consolidated complaint. J.A. 70. Among other things, the consolidated complaint sought compensatory and punitive damages, and an injunction reinstating the wrongfully terminated Rebate Program. J.A. 110.

After some initial discovery, Plaintiffs filed a motion for class certification. J.A. 92. The briefing became protracted when Citibank claimed — due to its own faulty record keeping — determination of class membership might be difficult. The district court thereupon allowed the Plaintiffs to conduct discovery to explore the newly-raised "faulty record-keeping" defense, and allowed each party to submit supplemental briefing. At that point — *and in contradiction to the position they now take* — Petitioners' argued: "This case, after all, does not involve a common fund or a joint interest among cardholders. Instead, it involves a collection of individual claims based on individual patterns of consumer purchasing decisions. The Ninth Circuit has made clear that aggregated damages may not be awarded in this type of case. . . ." J.A. 92.

Accordingly, after class certification discovery, and following an initial hearing on class certification, *sua sponte* the district court issued an order to show cause why the action

should not be dismissed for lack of jurisdiction and why the six original cases "should not be . . . remanded to state court." J.A. 66. In response, Petitioners argued *only* that the district court had diversity jurisdiction; Petitioners did *not* question that the six original actions (originally filed in state court) must be remanded to their state courts of origin upon a finding of no subject matter jurisdiction in federal court. J.A. 73-86. On October 29, 1999, the district court found that it lacked subject matter jurisdiction over the claims in the consolidated complaint, which it therefore dismissed, J.A. 91-101, and remanded to state court each of the six actions originally filed in state court and removed to federal court by Petitioners. J.A. 100-101.[2]

1. The district court dismissed the consolidated complaint for lack of jurisdiction. In response to the district court's show cause order, Petitioners argued for diversity jurisdiction, while Respondents suggested that jurisdiction was "questionable." J.A. 92-93. Even though no plaintiff or putative class member could possibly have a claim for compensatory damages greater than $75,000, Petitioners contended that the jurisdictional amount-in-controversy was met for three reasons: (i) plaintiffs requested an aggregate award of damages "without reference to the damages incurred by any individual cardholder", J.A. 95; (ii) the cost of compliance with the injunctive relief requested would

2. Petitioners have consistently and erroneously contended that the consolidated complaint "superceded" the original state law complaints thus rendering the state actions "non-existent." *See, e.g.*, J.A. 126. The district court dismissed the consolidated complaint and indicated an intention to dispose of the federal action while remanding the cases back to their original state courts. J.A. 100-101, 124-126. Thus, the court of appeals concluded that the district court's decision was reviewable under 28 U.S.C. § 1291. J.A. 111-112. The district court's order remanding the state actions is not before the Court, and the panel below concluded that it was not reviewable. J.A. 126.

be "significantly in excess of $75,000", J.A. 96; and (iii) punitive damages were prayed for and should be aggregated to determine whether the requisite amount-in-controversy was met, J.A. 97.[3] The district court rejected each one of Petitioners' arguments and dismissed the consolidated complaint for lack of jurisdiction.[4]

The district court rejected Petitioners' "aggregate award" argument because the district court found that the action involved "separate and distinct" claims, and thus under this Court's holdings of *Snyder* and *Zahn*, such claims could not be aggregated to meet the amount-in-controversy requirement. J.A. 94-96.

The district court also rejected Petitioners' argument that the jurisdictional minimum was met by the cost of complying with the injunctive relief requested. The district court did so for two reasons: (i) the cost to comply with an injunction could not serve to satisfy the amount-in-controversy requirement "[w]here, as here, the nature and value of the injunctive relief sought is identical to the nature and value of the monetary relief sought," as to do so would run contrary to the "principles of *Snyder* and *Zahn*," J.A. 96-97;[5] and

3. Petitioners did *not* argue to the district court that "any plaintiff's recovery of punitive plus compensatory damages could reach $75,000 (at that level, a recovery for six million class members would be the absurd total of $450 billion)." J.A. 97.

4. The Question Presented to the Court concerns (i) and (ii), thus further discussions of punitive damages and the underlying findings and rulings relevant to the punitive damages issue are omitted.

5. In particular, the district found:

> The injunctive relief sought . . . is simply a means to vindicate each plaintiff's separate and individual claim

(Cont'd)

(ii) even under the "either viewpoint" rule, the district court found that Petitioners "failed to show that the value of the injunction enforced *as to any one cardholder* would exceed $75,000," J.A. 97 (emphasis added).[6] Accordingly, the district court found that Petitioners failed to carry their burden of proving by a preponderance of the evidence that it would cost more than $75,000 to reinstate the Rebate Program even for one plaintiff.

2. The Ninth Circuit affirmed the dismissal of the consolidated complaint for lack of jurisdiction.[7] The panel

(Cont'd)

> for accrual of rebates for five years. Plaintiffs' having made class action allegations does not alter the nature of the rights asserted. Where, as here, the nature and value of the injunctive relief sought is identical to the nature and value of the monetary relief sought, to permit aggregation of the former but not the latter would undermine the principles of *Snyder* and *Zahn*.

J.A. 96-97.

6. Contrary to Petitioners' contention that they "demonstrated that the plaintiffs have a common and undivided interest in the their claim for an injunction," the district court found otherwise. J.A. 96-97. Additionally, the only evidence in the record about the monetary cost of compliance with any injunction is the cost to Citibank, J.A. 87-89; there is no evidence in the record that an injunction would impose any similar costs on Ford. In fact, according to the declaration of Sheryl Behar, Citibank provided the "administrative services" under the Rebate Program which, if reinstated, would cost Citibank in excess of $75,000, while "Ford provided cardholders with rebate credits. . . ." J.A. 87-88. As the district court found, these rebate credits could total no more than $3,500 to each plaintiff. J.A. 95.

7. On appeal, Petitioners did not contend that plaintiffs' damages claims could be aggregated to meet the amount-in-controversy requirement, or that plaintiffs' claims were "common and undivided" as opposed to "separate and distinct." J.A. 113.

first confirmed that it had jurisdiction to review the district court's order, J.A. 111-112, and then addressed Petitioners' contention that the cost of compliance with the requested injunctive relief carries them over the jurisdictional threshold. The court began its analysis by reviewing the history of applying the "either viewpoint" rule to multi-plaintiff actions.[8] Under the "either viewpoint" rule, the Ninth Circuit has held that the amount-in-controversy requirement can be satisfied if "the pecuniary result to either party which the judgment would directly produce" exceeds the jurisdictional amount. J.A. 113 (citing *Ridder Bros. v. Blethen*, 142 F.2d 395, 399 (9th Cir. 1944). However, the panel also noted that *Snow v. Ford Motor Co.*, 561 F.2d 787, 790 (9th Cir. 1977), specifically foreclosed application of the "either viewpoint" rule to class actions. J.A. 114.

According to the panel, *Snow* declined to extend *Ridder* to class actions because of the long-standing non-aggregation principle and the Court's decisions in *Snyder* and *Zahn*. It stated, "the threshold question is aggregation, and it must be resolved affirmatively before total detriment [to the defendant][9] can be considered. Otherwise, the principle of *Snyder* and *Zahn* would be subverted, i.e., plaintiffs with minimal damages could dodge the non-aggregation rule by praying for an injunction." J.A. 115 (citation & internal quotation omitted). Accordingly, "where the equitable relief sought is but a means through which the individual claims

8. The Ninth Circuit has rejected the "plaintiff viewpoint" rule when determining the value of non-class claims for purposes of determining whether the amount-in-controversy requirement is satisfied. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 405 n.6 (9th Cir. 1996) (en banc); *Ridder Bros. v. Blethen*, 142 F.2d 395, 399 (9th Cir. 1944).

9. Courts equate "total detriment" to aggregation. *See Snow*, 561 F.2d at 790; *Lonnquist v. J.C. Penney Co.*, 421 F.2d 597, 599 (10th Cir. 1970).

may be satisfied, the ban on aggregation applies with equal force to the equitable as well as monetary relief." *Id.*

Thus, the panel correctly noted that in multi-plaintiff cases seeking declaratory or injunctive relief, the amount-in-controversy is measured by the "nature and value of the right asserted." J.A. 115 (citing *Snow*, 561 F.2d at 790). Furthermore, the panel emphasized that if plaintiffs were asserting a "common and undivided" right, it could look to "either viewpoint" to determine jurisdiction. But if the right asserted was "separate and distinct," the jurisdictional test "is the cost to the defendants of an injunction running in favor of one plaintiff." J.A. 115-116 (citing *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997)).

Applying those standards, just like the district court, the panel first held that plaintiffs do not possess a "common and undivided interest in accruing rebates under the program," which is the injunctive relief requested. J.A. 116-117. The court even noted that Petitioners originally argued this position in opposition to the motion for class certification when they concluded "[b]ecause the [putative] class members in this case do not in any sense possess joint ownership of, or an undivided interest in a common *res*, their claims . . . are separate and distinct." J.A. 117 (quoting Petitioners). In line with Petitioners' earlier position, which is *contrary to the position Petitioners take before this Court*, the panel concluded that the "right [to injunctive relief] is distinct to each plaintiff, is based on his or her individual contractual relationship with Ford and Citibank, and is worth no more than $3,500." J.A. 117. In other words, the court found that the equitable relief sought in this case and under these facts was merely a "means through which the individual claims may be satisfied" and "no plaintiff has an individual claim worth more than $75,000." J.A. 118.

Following the finding that the injunctive relief claims are "separate and distinct" and valued at no more than $3,500 per plaintiff, the panel proceeded to test whether the cost of an injunction running in favor of one plaintiff would exceed $75,000. Departing some from the disjunctive rationale of the district court,[10] the panel concluded, as a matter of law, that fixed administrative compliance costs that would be imposed if the injunction were granted could not satisfy the amount-in-controversy requirement. The court reasoned that, if permitted, "'every case, however trivial, [brought] against a large company would cross the [jurisdictional] threshold.'" J.A. 118-119 (quoting and citing *Brand Name*, 123 F.3d at 610).

SUMMARY OF ARGUMENT

By its plain terms, the unambiguous diversity statute grants the federal district courts original jurisdiction over "all civil actions" involving completely diverse parties where "the matter in controversy exceeds the sum or value of $75,000." 28 U.S.C. § 1332(a)(1). Thus, one essential element of federal jurisdiction under the diversity statute is the amount or value of the litigation. Here, Plaintiffs seek damages and an injunction as a means to provide value to their individual contract rights. There is no dispute that Plaintiffs' contract claims are "separate and distinct" and thus under this Court's long-settled interpretation of the amount-in-controversy requirement, the value of the claims cannot be aggregated to meet the jurisdictional threshold of $75,000. *Snyder v. Harris*, 394 U.S. 332 (1969). Moreover, according to the parties and the courts below, no plaintiff has an

10. In addition to concluding that the injunctive relief was the means through which plaintiffs sought to satisfy their individual claims, the district court also found that Petitioners had failed to meet its burden of proving that the amount-in-controversy was satisfied even for one plaintiff under the "either viewpoint" rule. J.A. 97. The panel did not disturb this finding.

individual claim exceeding $75,000. However, Plaintiffs prayed for an injunction as well. "In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977). Thus, the question in this case is how to value the "object of the litigation" and whether that value exceeds the jurisdictional threshold for each plaintiff.

Petitioners ask this Court to value the "object of the litigation" from the defendant's viewpoint or, alternatively to conclude that plaintiffs' request for injunctive relief is a "common and undivided" interest that may be aggregated to determine the amount-in-controversy. For all of the following reasons, Petitioners' request should be denied and the judgment should be affirmed.

I. The policy of this Court is to construe the amount-in-controversy requirement strictly and against expanding federal jurisdiction. *Healy v. Ratta*, 292 U.S. 263, 270 (1934); *Snyder*, 394 U.S. at 339-40. This is done to respect the proper role of state courts in actuating the federal judicial system and to ensure that the federal courts are not burdened without Congress's explicit authorization. *Healy*, 292 U.S. at 270; *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Snyder*, 394 U.S. at 339-40; Thomas E. Baker, *The History and Tradition of the Amount in Controversy Requirement: A Proposal to 'Up the Ante' in Diversity Jurisdiction*, 102 F.R.D. 299, 302-18 (1985).

II.A. The rule for valuing injunctive relief for purposes of determining the amount-in-controversy is settled and has been for some time: "the amount in controversy is measured by the value of the object of the litigation." *Hunt*, 432 U.S. at 347 (citing cases back to 1907). It is generally understood

that the "object of the litigation" is the right or rights that *plaintiffs* seek to protect. In other words, the "matter in dispute" is "the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken." *Smith v. Adams*, 130 U.S. 167, 175 (1889).

Here, the relevant rights that Plaintiffs seek to protect are their separate contractual rights. In particular, plaintiffs seek to hold Ford and Citibank to their bargain and permit each class member to "earn up to $700 in rebates over any consecutive 12-months for a maximum rebate of $3,500 over a 5-year period" toward the purchase or lease of certain Ford vehicles. J.A. 49, 109. The relevant controversy is whether Ford and/or Citibank owe Plaintiffs this right and these rebates.[11] Thus, in this case, the "object of the litigation" is the value of the *right* to be protected and gained by Plaintiffs, which the courts below have valued at less than $75,000 per plaintiff.

Nevertheless, Petitioners contend that the administrative costs imposed by the injunctive relief requested can and should be used to determine the value of the "object of the litigation" in all cases where injunctive relief is requested. Petitioners are mistaken. Such administrative costs are collateral to the rights that plaintiffs seek to protect and thus are not included in the jurisdictional calculus. *Ross v. Prentiss*, 44 U.S. (3 How.) 771, 772 (1845). Indeed, one can see that they are collateral to the "object of the litigation" by virtue of the fact that Plaintiffs are not required to present

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11. There are additional objectives of the litigation under consumer protection statutes and the common law unjust enrichment claim (*e.g.*, disgorgement), but these objectives do not appear relevant to the Question Presented and Petitioners have not emphasized these aspects of the litigation in their briefs at any stage of the litigation. Thus, Respondents similarly omit discussion of these issues.

testimony about these administrative costs to establish their rights, and such administrative costs are no defense to a breach of contract claim. Consequently, Petitioners would not introduce such testimony either. *Cf. Smith v. Adams*, *supra*.

B.1. Furthermore, this Court has historically valued the "object of the litigation" solely from the plaintiff's viewpoint. Indeed, on several occasions, this Court has expressly stated that this is the rule. *See, e.g., Scott v. Frazier*, 253 U.S. 243, 244 (1920) ("It is well settled the . . . amount in controversy must equal the jurisdictional sum as to each complainant."); *Glenwood Light & Water Co. v. Mutual Light, Heat & P. Co.*, 239 U.S. 121 (1915) (holding jurisdictional amount is tested "by the value of the object to be gained by complainant"); *Bitterman v. Louisville & Nashville R.R. Co.*, 207 U.S. 205, 225 (1907) ("[T]he substantial character of the jurisdictional averment in the bill is to be tested, not by the mere immediate pecuniary damage resulting from the acts complained of, but *by the value of the . . . rights of property which the complainant sought to have recognized* and enforced."); *Hunt v. New York Cotton Exchange*, 205 U.S. 322, 336 (1907) ("The object of this suit is to protect that right. The right, therefore, is the matter in dispute, and its value to the Exchange [the plaintiff] determines the jurisdiction").

B.2. Given the paramount policy that the plaintiff is the master of the complaint and that the complaint controls jurisdiction, it is easy to understand why the plaintiff's viewpoint is used to test the value of the "object of the litigation." First, such a rule is consistent with the general rule that "the sum claimed by the plaintiff controls" if the claim is made in good faith. *Saint Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). Second, such an approach is also consistent with the well-pleaded complaint rule and removal statute. *Id.* at 291. Third, the plaintiff's

viewpoint rule is the one bright line rule that is consistent with the long-established right of plaintiffs to decide which jurisdiction to bring his or her case in, and which law to rely upon. If a defendant, by merely recasting the complaint or adding allegations about the cost of the injunctive relief requested, could defeat a plaintiff's choice of law or forum, then, in the words of this Court, "the plaintiff would be master of nothing." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 399 (1987); *see also Great Northern Ry. Co. v. Alexander*, 246 U.S. 276, 281 (1918) (jurisdiction is "to be determined by the allegations of the complaint . . . it cannot be made removable by any statement in the petition for removal or in subsequent pleadings by the defendant"). This is especially true in cases brought against large multinational corporations that would likely incur in excess of $75,000 in administrative costs for any injunction issued against them. *See Brand Name*, 123 F.3d at 610.

C. Additionally, considerations of *stare decisis* militate against opening the federal courts to every completely diverse action that seeks injunctive relief, which would be the effect if this Court were to adopt the "either viewpoint" rule as Petitioners propose. Considerations of *stare decisis* are especially important where, as here, the Court is interpreting a statute because Congress is "free to alter what we have done." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-173 (1989).

As noted above, the relevant decisions of this Court have stood for decades and, more importantly, are the products of over 100 years of this Court's jurisprudence. Other than increasing the amount-in-controversy threshold to establishing federal jurisdiction, the relevant text of the diversity statute has remained essentially unchanged by Congress since the statute was originally enacted. Moreover,

Congress has presumably read and understood these holdings when setting the requisite amount-in-controversy. Indeed, Congress has ratified the Court's interpretation. *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978). Thus, it would be inappropriate for this Court to expand federal jurisdiction where Congress has chosen not to. *Zahn*, 414 U.S. at 300-01.

Congress's current consideration of S. 1712 and H.R. 2341 (the "Class Action Fairness Act of 2001") implicitly acknowledges that this case cannot presently be brought in federal court. These bills seek to amend 28 U.S.C. § 1332 to federalize class actions and modify the amount-in-controversy requirements to undo the effect of this Court's holdings interpreting section 1332's amount-in-controversy requirement. If enacted, the Class Action Fairness Act would establish the new rules of federal jurisdiction in class actions that Petitioners ask this Court to write but at a different *and higher* threshold, well above the present $75,000.

If Congress chooses to, it can and should amend section 1332 to adopt and incorporate Petitioners' position and fix any perceived error. However, this Court should not pronounce a new rule that would open the federal courts to the hundreds, if not thousands, of state court actions filed across the country annually that pray for injunctive relief, especially at time when this Court has expressed its concern over the caseloads in federal court. *See* 1999 Year-End Report on the Federal Judiciary. Instead, this Court should reaffirm its prior holdings and state clearly that the plaintiff's viewpoint controls the "object of the litigation," and defer to Congress the determination of whether diversity jurisdiction should be expanded to include all diverse cases and/or class actions where plaintiffs seek injunctive relief.

Assuming that the Court rejects the "either viewpoint" approach Petitioners propose and reaffirms its holdings that "plaintiff's viewpoint" determines the amount-in controversy, diversity jurisdiction is lacking here because the value of the "object of the litigation" from the plaintiff's perspective does not exceed $75,000 per plaintiff. Thus, the judgment should be affirmed on this basis alone.

III.A. The non-aggregation principle also precludes federal jurisdiction over this case. According to the traditional interpretation of the diversity statute, the non-aggregation principle holds that the "separate and distinct claims of two or more plaintiffs cannot be aggregated in order to satisfy the jurisdictional amount requirement." *Snyder*, 394 U.S. at 335. The only time aggregation is permitted in multi-plaintiff cases is where "two or more plaintiffs unite *to enforce a single title or right in which they have a common and undivided interest*." *Id.* (emphasis added).

B. Here, Plaintiffs' claims are separate and distinct. In fact, Petitioners concede this point. J.A. 113, 117. Thus, the non-aggregation principle applies. Furthermore, contrary to Petitioners' position, it does not matter whether Plaintiffs share a "common and undivided" interest in the injunctive relief because the non-aggregation principle applies whenever plaintiffs unite to enforce (i) "a single title or right," that is (ii) "common and undivided," and here. Petitioners concede that Plaintiff do not share a united title or right, even to the relief requested. Accordingly, Plaintiffs' claims cannot be aggregated to meet the jurisdictional threshold.

Additionally, even if Plaintiffs' claims could be aggregated, defendants' costs cannot. Here, the record reveals that although Citibank would incur over $75,000 in administrative costs if an injunction reinstating the Rebate Program were to issue, there is no evidence that an injunction

would impose similar costs on Ford. In fact, according to the declaration of Sheryl Behar, Citibank provided the "administrative services" under the Rebate Program which, if reinstated, would cost Citibank in excess of $75,000, while "Ford provided cardholders with rebate credits. . . ." J.A. 87-88. As the district court found, these rebate credits could total no more than $3,500 to each plaintiff. J.A. 95. Thus, even if the defendant's viewpoint is considered and jurisdiction is tested by "the cost to each defendant of an injunction running in favor of one plaintiff,"[12] finding jurisdiction here violates the non-aggregation principle because the cost to Ford is at most $3,500 per plaintiff. Therefore, the district court's finding that Petitioners failed to meet their burden under the "either viewpoint" rule should be upheld. J.A. 97.

C. Finally, the "either viewpoint" rule, if adopted in the form that Petitioners' request (*i.e.*, to include defendant's administrative compliance costs in the jurisdictional calculus), would create such a porous exception to the non-aggregation principle that the principle would be rendered non-existent. Indeed, as Judge Posner has noted, "every case, however trivial, against a large company would cross the [jurisdictional] threshold," if such administrative costs were included. *Brand Name*, 123 F.3d at 610.

The Court need not take this bait. Not only are such costs collateral to the "object of the litigation" and thus excluded from the definition of amount-in-controversy, *see Ross*, 44 U.S. at 772, but also the Ninth Circuit held that these costs cannot be considered as a matter of law if the non-aggregation principle is to be respected. The Court should affirm the Ninth Circuit's ruling because failing to place such a limitation on the "either viewpoint" rule would mean that the federal courthouse doors would be open to every large corporation

12. *Brand Name*, 123 F.3d at 610.

whenever completely diverse parties sue them and seek injunctive relief — including individual actions — and to every diverse plaintiff who wished access to the federal courts simply by including a prayer for injunctive relief. Not only would such an expansion of federal jurisdiction render the non-aggregation principle effectively meaningless, but it would also be contrary to this Court's interpretations and policies pertaining to the diversity statute. If federal jurisdiction is to be expanded this way, the Court should defer to Congress.

ARGUMENT

I. The Amount-In-Controversy Requirement Under 28 U.S.C. § 1332 Is Strictly Construed Against Expanding Federal Jurisdiction

One of the essential elements of federal jurisdiction under the diversity statute is the amount or value of the subject matter in litigation. By its plain terms, the unambiguous diversity statute grants the federal district courts original jurisdiction over "all civil actions" involving completely diverse parties where "the matter in controversy exceeds the sum or value of $75,000." 28 U.S.C. § 1332(a)(1).[13] Thus, the question presented here is whether this case, in which Plaintiffs seek damages perhaps totaling in the millions and an injunction as a means to provide value to their individual contract rights which admittedly would cost Citibank more than $75,000 to implement, but would not cost Ford more than $75,000 per plaintiff, establishes the requisite amount-in-controversy even though no plaintiff would obtain more than $75,000 in pursuit of his or her separate and distinct contractual claim.

13. For years the federal question jurisdiction statute, 28 U.S.C. § 1331, contained a similar amount-in-controversy requirement. Some of the cases cited in Respondents' brief involve that requirement.

Since the creation of the federal courts with the Judiciary Act of 1789, which has remained essentially unchanged since its inception, suits between citizens of different states, and at times those based on a federal question, and involving less than a certain prescribed amount could neither be brought in a federal court originally nor removed to federal court from a state court. Indeed, the only material changes to the statute have been for Congress to limit the number of federal cases by increasing the amount-in-controversy threshold.[14] In *Healy v. Ratta*, 292 U.S. 263 (1934), this Court held, with regard to the policy of Congress in fixing a minimum jurisdictional amount for the federal courts:

> Pursuant to this policy the jurisdiction of federal courts of first instance has been narrowed by successive acts of Congress, which have progressively increased the jurisdictional amount. The policy of the [diversity] statute calls for its strict construction. . . . Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.

Id. at 270; *see also Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941)

> The power reserved to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution. Due regard for the rightful independence of state governments, which should actuate federal courts,

14. *See* Pet. Br. at 10 n.3 citing the requisite amounts and the amendments to the diversity statute.

> requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.

(Internal quotation omitted). *Saint Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938) ("The intent of Congress drastically to restrict federal jurisdiction in controversies between citizens of different states has always been rigorously enforced by the courts."); *Snyder*, 394 U.S. at 339-40 (refusing to overrule the "aggregation doctrine" in part because it would rewrite the "settled interpretation" of the diversity statute incorporating that doctrine, and because it would expand the federal caseload which would "undercut the purpose" of the amount-in-controversy threshold requirement). Thus, it is one governing principle and purpose of the diversity statute — and perhaps the principal purpose — to narrow federal jurisdiction in favor of jurisdiction in state courts, and correspondingly limit those cases that can be brought in federal court.[15] *See* Thomas E. Baker, *The History and Tradition of the Amount in Controversy Requirement: A Proposal to 'Up the Ante' in Diversity Jurisdiction*, 102 F.R.D. 299, 302-18 (1985).

The strict reading of the scope of diversity jurisdiction applies here and to Petitioners' request that this Court expand federal jurisdiction by revisiting how to value the "object of the litigation" to include the costs to the defendant of the requested injunctive relief. Because such a reading of the diversity statute would be inconsistent with, if not contrary to, the Court's settled jurisprudence, Petitioners' request should be rejected.

15. Federal courts, of course, are courts of limited jurisdiction. Indeed, federal courts must, at all times, be ever vigilant in ensuring that the requisite amount-in-controversy is satisfied, else jurisdiction is lacking and the case must be dismissed. *See, e.g., Thomson v. Gaskill*, 315 U.S. 442, 446 (1942); *Saint Paul*, 303 U.S. at 290-91; *North Pacific S.S. Co. v. Soley*, 257 U.S. 216, 221 (1921).

II. The Rule For Valuing Injunctive Relief To Determine Whether The Amount-In-Controversy Requirement Under The Diversity Statute Is Well-Settled And Prohibits Federal Jurisdiction In This Case Because The Value Of The "Object Of The Litigation" Does Not Exceed The Requisite Amount-in-controversy

A. When An Injunction Is Prayed for, the Amount-In-Controversy Is Measured by the Value of the "Object of the Litigation."

This Court has interpreted and settled what is a "matter in controversy" for purposes of the diversity statute in suits, such as this one, seeking in an injunction: "it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt*, 432 U.S. at 347. As has been noted by commentators and courts over the years, it is difficult to establish a rule more concrete than this, because the "object of the litigation" can and will differ depending on the facts and circumstances of each case. *See, e.g., Elliott v. Empire Natural Gas Co.*, 4 F.2d 493, 496 (8th Cir. 1925) ("No rules as to how jurisdictional amount shall be arrived at can be laid down governing every case, for there are different shades of fact differentiating the various cases, and each one is dependent upon its own particular facts and circumstances.") It is generally understood that the subject or object of the litigation or matter in dispute is "the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken." *Smith v. Adams*, 130 U.S. 167, 175 (1889); *see* Note, 34 COLUMBIA L. REV. 311, 311 (1934). Stated otherwise, the "matter in controversy" or "the object of the litigation" is properly understood as the right(s) sought to be protected by the complaint. Thus, under *Hunt*, it is the value of these rights that determines whether the amount-in-controversy requirement is satisfied when injunctive relief is requested.

Here, the object of Plaintiffs' complaint is to hold Ford and Citibank to their bargain and permit each class member to "earn up to $700 in rebates over any consecutive 12-months for a maximum rebate of $3,500 over a 5-year period" toward the purchase or lease of certain Ford vehicles. J.A. 49, 109. The relevant controversy is whether Ford and/or Citibank owe Plaintiffs this right and these rebates. Thus, in this case, the "object of the litigation" is the value of the *right* to be protected and gained by Plaintiffs; it is not how much it would cost the Petitioners to administer the relief to give value to Plaintiffs' right, assuming their contractual rights were vindicated. *Hunt*, 432 U.S. at 347 (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 181 (1936); *Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co.*, 239 U.S. 121, 126 (1915); *Hunt v. New York Cotton Exchange*, 205 U.S. 322, 336 (1907)); Armistead M. Dobie, *Jurisdictional Amount in the United States District Court*, 38 HARV. L. REV. 733, 734 (1925) (suggesting that the amount-in-controversy is "always" determined by the "value to the plaintiff of the right" that plaintiff seeks to protect).[16] To the extent that the Ninth Circuit's opinion takes a different approach from the above well-established precedent of this Court, Respondents respectfully disagree with the panel's rationale.

If the object of this litigation were not clear from the face of the complaint, it becomes abundantly clear from the realization that were Petitioners to give each putative class

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16. Several courts of appeal agree with Judge Dobie, at least in the context of multi-plaintiff cases or class actions. *See, e.g., Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1050 (3d Cir. 1993); *Alfonso v. Hillsborough County Aviation Auth.*, 308 F.2d 724, 726-27 (5th Cir. 1962); *Massachusetts State Pharm. Asso. v. Federal Prescription Serv., Inc.*, 431 F.2d 130, 132 n.1 (8th Cir. 1970); *Snow*, 561 F.2d at 790 (9th Cir. 1977); *Lonnquist*, 421 F.2d at 599 (10th Cir. 1970); *Ericsson GE Mobile Communs. v. Motorola Communs. & Elecs.*, 120 F.3d 216, 219-20 (11th Cir. 1997); *but see Brand Name*, 123 F.3d at 609-10 (7th Cir.); *Justice v. Atchison, T. & S.F.R. Co.*, 927 F.2d 503, 505 (10th Cir. 1991).

member $3,500 toward the purchase or lease of their next qualifying Ford vehicle, the "controversy" relevant to the injunction sought would disappear. In *Russell v. Stansell*, 105 U.S. 303 (1882), appellants petitioned the district court to enjoin Stansell from collecting on an assessment worth more than $70,000 decreed against the Levee Board of Mississippi. The plaintiffs in the case became involved because the Levee Board did not satisfy the decree, and under the provisions of the statute creating the Levee Board, Stansell could obtain an assessment and collection of the charge from the owner of the lands in the district, which Stansell had done. Despite the fact that the plaintiffs sought to enjoin Stansell from collecting an amount more than the requisite amount-in-controversy, this Court held that jurisdiction was lacking. *Id.* at 304. In doing so, this Court stated that the "*object* was to relieve each separate owner from the amount for which he personally, or his property, was found to be accountable. An injunction, if granted, would necessarily be to prevent [Stansell] from collecting from each owner the amount for which he was separately liable." *Id.* (emphasis added). This Court then held that the plaintiffs' interests were "distinct and separate" and thus could not be "united" or aggregated "for the purpose of making up the amount necessary to give us jurisdiction on appeal" even though the injunction sought, if granted, would cost Stansell more than the requisite amount-in-controversy. *Id.*

This case presents the converse to *Russell*. Instead of seeking an injunction to prevent someone from collecting what they separately owe, the *object* of the injunction sought is to force the Petitioners to pay each plaintiff what they are separately owed under their individual contracts. And, Petitioners can relieve themselves of further liability by paying to each what they owe. In other words, the nature of the right Plaintiffs seek to protect through the equitable relief requested is merely the "means through which the individual claims may be satisfied." J.A. 117. This is the object of the litigation.

Moreover, for Plaintiffs to establish their right to their individual rebate amounts, it does not matter that Citibank would incur administrative costs in excess of $75,000; those costs are simply a collateral effect of the litigation. *Ross v. Prentiss*, 44 U.S. (3 How.) 771, 772 (1844) (holding jurisdiction does not depend upon the amount of any contingent loss or damage which one of the parties may sustain, but upon the amount in dispute between them); *Elliott*, 4 F.2d at 501 (same). Indeed, no testimony about the administrative costs would be taken to establish and protect the rights at issue. *Cf. Smith v. Adams*, *supra*. In *Ross v. Prentiss*, land worth more, and mortgaged for more than $2,000, was about to be sold on execution for a debt of a lesser sum, and a complaint by the mortgagee to stay the sale was dismissed. The mortgagee appealed, and insisted that jurisdiction depended on the value of the property, and that he might lose the whole right of his mortgage by a forced sale. In rejecting these arguments and dismissing the appeal, this Court stated:

> The only matter in controversy between the parties is the amount claimed on the execution. The dispute is whether the property in question is liable to be charged with it or not. *The jurisdiction does not depend upon the amount of any contingent loss or damage which one of the parties may sustain by a decision against him*, but upon the amount in dispute between them; and as that amount is in this case below two thousand dollars, the appeal must be dismissed.

Ross, 44 U.S. at 772 (emphasis added).

Similarly, here, the relevant controversy is whether the Petitioners breached the individual's contract when they unilaterally terminated the Rebate Program. The amount-in-

controversy is the damage, if any, each plaintiff suffered as a result of the contractual breach, not the administrative costs of the Rebate Program, which is collateral to the value of the contractual right.[17] And, the value of the contractual right undisputedly is less than $75,000 each.

B. Historically, the Plaintiff's Viewpoint or Objective Has Been Determinative in Valuing the "Object of the Litigation" and the Amount-In-Controversy.

If the Court were to agree with Petitioners that their costs are the "object of the litigation" and specifically endorse equating the defendant's costs with the test for determining jurisdiction, the Court would be uprooting over a 100 years of settled jurisprudence and fundamental principles that Congress has relied upon in setting the amount-in-controversy threshold only to expand federal jurisdiction needlessly. *Snyder*, 394 U.S. at 338-42. To be sure, valuing the "object of the litigation" has caused courts problems over the years. This confusion has lead lower courts to create the so-called "either viewpoint" rule. However, this Court has consistently valued the "object of the litigation" from the plaintiff's viewpoint, in large measure because jurisdiction is tested on the face of the complaint. Indeed, this Court has expressly stated on several occasions that the jurisdictional amount is to be tested "by the value of the object to be gained by complainant." *See, e.g., Glenwood Light & Water Co.*, 239 U.S. at 125. The Court should reaffirm this principle and provide the lower courts with clear guidance explaining

17. To see just how collateral these administrative costs are, consider the fact that although Citibank will incur administrative costs in excess of $75,000, according to the allegations in the complaint, Citibank will actually *profit* financially if the Rebate Program were reinstated. J.A. 54. The Rebate Program was discontinued because of Ford's contingent liability for the outstanding rebates. J.A. 54-55. It is the money that Ford will pay to Plaintiffs in redeeming the rebates that are in controversy.

that plaintiffs are the master of the complaint and jurisdiction, and thus it is their perspective that is paramount.

1. Plaintiff's viewpoint determines the value assigned to the "object of the litigation."

Because jurisdiction is determined from and contingent upon the allegations in the complaint, it is natural to assess the value of the "object of the litigation" or right sought to be enforced from the plaintiff's perspective as well. Indeed, this Court has declared this the rule.

In *Glenwood Light & Water Co.*, for example, this Court stated "the jurisdictional amount is to be tested by *the value of the object to be gained by complainant*." *Id.* at 125 (emphasis added). What is of additional significance though is that this Court specifically rejected the notion that jurisdiction could be established by the cost to the defendant. In *Glenwood Light* the plaintiff sought to enjoin the defendant from erecting telephone poles and wires that were causing injury to the plaintiff's poles, wires, and business. The district court had held "that the jurisdictional amount was *fixed by the cost to defendant* of removing its poles and wires in the streets and alleys where they conflicted or interfered with the poles and wires of complainant, and replacing defendant's poles and wires in such position as to avoid conflict and interference." *Id.* (emphasis added). That amount, as fixed by the cost to the defendant, was less than the requisite amount-in-controversy and the case was dismissed. On appeal, this Court expressly held that it was erroneous to test the jurisdictional amount by the cost to the defendant. Instead, "the rule applicable generally to suits for injunction to restrain a nuisance, a continuing trespass, or the like, *viz.*, that the jurisdictional amount is to be tested by *the value of the object to be gained by complainant*." *Id.* (emphasis added). And, because the plaintiff sued to "maintain and

operate its plant and conduct its business free from wrongful interference by defendant," it was the value that *the remedy would bring to the plaintiff* that was "determinative of the jurisdiction." *Id.* at 126.

Similarly, in *Hunt v. New York Cotton Exchange*, 205 U.S. 322 (1907), plaintiff Exchange brought suit to enjoin the defendant from receiving, using, or selling quotations of the Exchange without its consent or approval. The defendant contended that the amount-in-controversy requirement was not met because what plaintiff sought to enjoin was his contract with a telegraph company from whom he received quotations, and that contract was less than jurisdictional prerequisite. In response, this Court first noted that plaintiff's injury, and the reason or "object" of the lawsuit, was not the fee paid by Hunt under contract to the telegraph company, but instead was

> to enjoin the appellant from receiving, using or selling, directly or indirectly, the Exchange's quotations or permitting or maintaining any wire to his office over which the quotations are passing, or distributing the quotations, until he shall have acquired the right to receive them either by contract of purchase from the Exchange, or with its consent and approval, from one of the Telegraph Companies authorized to distribute them.

Id. at 336. This Court continued, stating:

> And the right to the quotations was declared, as we said in *Board of Trade* v. *Christie Grain & Stock Company*, to be property, and the Exchange may keep them to itself or communicate them to others. *The object of this suit is to protect that*

> *right. The right, therefore, is the matter in dispute, and its value to the Exchange determines the jurisdiction*, not the rate paid by appellant to the Telegraph Company.

Id. (emphasis added).

Bitterman v. Louisville & Nashville R.R. Co., 207 U.S. 205 (1907), is yet another case where this Court expressly held that the jurisdictional amount is determined from the plaintiff's perspective. In *Bitterman*, the railroad sought to enjoin ticket brokers from dealing non-transferable tickets at reduced rates. In response to a jurisdictional challenge, this Court stated:

> [T]he substantial character of the jurisdictional averment in the bill is to be tested, not by the mere immediate pecuniary damage resulting from the acts complained of, but *by the value of the* business to be protected and the *rights of property which the complainant sought to have recognized* and enforced.

Id. at 225 (emphasis added); *see also Thomson v. Gaskill*, 315 U.S. at 446-47 (valuing the amount-in-controversy in suit seeking and injunction and damages from the face of the complaint and solely from the "pecuniary consequence" to plaintiffs); *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 587-89 (1939) (refusing to value the amount-in-controversy from the defendants' perspective in a case seeking injunctive relief of a tax statute despite, if enjoined, the direct pecuniary deprivation to defendant California would have exceeded the jurisdictional threshold); *Scott v. Frazier*, 253 U.S. 243, 244 (1920) ("It is well settled that . . . amount in controversy must equal the jurisdictional sum as to each complainant."); *Berryman v. Board of Trustees*, 222 U.S. 334, 345-46 (1912)

(valuing the amount in controversy, in a suit to enjoin the collection of a tax against plaintiff on the ground that it was perpetually exempt from taxation by contract, in accordance with the value of the right plaintiff sought to protect); *McNeil v. Southern R. Co.*, 202 U.S. 543, 558 (1906) (valuing rights sought to be enforced in the action from the plaintiff's perspective); *Wheless v. St. Louis*, 180 U.S. 379, 382 (1901) (valuing an injunction and stating:

> The 'matter in dispute' within the meaning of the statute is not the principle involved, but the pecuniary consequence to the individual party, dependent on the litigation, as, for instance, in this suit the amount of the assessment levied, or which may be levied, *as against each of the complainants separately*. The rules of law which might subject complainants to or relieve them from assessment would be applicable alike to all, but each would be so subjected, or relieved, in a certain sum, and not in the whole amount of the assessment.

Gibson v. Shufeldt, 122 U.S. 27, 39 (1887) ("The sole matter in dispute . . . is between the defendants and each plaintiff as to the amount which the latter shall recover"); *see generally* C. T. Drechsler, *Criterion of Jurisdictional Amount to Vest Jurisdiction of Federal Court Where Injunction Is Sought*, 30 A.L.R.2d 602 (1954 & Supp. 2002).

Despite this Court's pronouncement of such a clear rule that the "amount in controversy must equal the jurisdictional sum as to each complainant," *Scott v. Frazier*, *supra*, Plaintiffs acknowledge that this Court has not always seemingly determined the value of the "object of the litigation" from the "plaintiff's viewpoint", though it has always valued the objective from the rights plaintiffs put

at issue and the allegations contained in the complaint. *See, e.g., Mississippi & Missouri Railroad Co. v. Ward*, 67 U.S. (2 Black) 485, 492 (1863); *Market Co. v. Hoffman*, 101 U.S. (11 Otto) 112, 113 (1879). Petitioners latch onto these two cases to support their contention that "either viewpoint" rule controls federal jurisdiction under the diversity statute whenever plaintiffs' seek an injunction. However, these cases are not contrary to the well-settled rule that it is the plaintiff's complaint and the plaintiff's "object of the litigation" that is controlling.

First, *Market Co. v. Hoffman*, is inapposite. As this Court has noted, it is a case involving several plaintiffs with a common and undivided interest and thus the value of the litigation was the aggregate amount at stake by the sale of the market stalls. *See Gibson*, 122 U.S. at 34 (grouping *Market Co.* with *Shields v. Thomas*, 58 U.S. (17 How.) 3 (1855), and *Freeman v. Dawson*, 110 U.S. 264 (1884)). In *Market Co.*, 206 complainants, all occupiers of the stalls in the market, sued jointly to enjoin (and did enjoin) the market company from selling the stalls for more than $60,000. On appeal, this Court stated, "the decree is a single one in favor of them all, and in denial of the right claimed by the company, which is of far greater value than the sum which, by the act of Congress, is the limit below which an appeal is not allowable." *Market Co.*, 101 U.S. at 113. Furthermore, the purpose of the lawsuit was to enjoin the sale. Thus, the "object of the litigation," from the plaintiff's perspective also happened to be the cost to the defendant.

Mississippi & Missouri Railroad Co. v. Ward, however, is a little more problematic, though it too is reconcilable with the "plaintiff's viewpoint" rule. Suing as a "public prosecutor," the plaintiff in *Ward* sought to abate a public nuisance. In particular, the plaintiff sought removal of the

Rock Island Bridge, which spanned the Mississippi river, on the theory that the bridge was an obstruction to navigation and amounted to a public nuisance. No damages were asked. This Court noted, in sustaining jurisdiction, "[b]ut the want of a sufficient amount of damage having been sustained to give the Federal Courts jurisdiction will not defeat the remedy, as the removal of the obstruction is the matter of controversy, and the value of the object must govern." 67 U.S. at 492. Courts and commentators have interpreted this statement as proof that the "defendant's viewpoint" can be considered in valuing the amount-in-controversy. *See*, *e.g.*, Dobie, *supra*, at 740. However, this Court's decision in *Ward* is consistent with the "plaintiff's viewpoint" rule even though the amount-in-controversy was measured by the cost to remove the bridge. Indeed, properly understood, *Ward* is yet another case where the "object of the litigation" is determined by the complaint and plaintiff's viewpoint, and valued in accordance with what the plaintiff sought to accomplish or obtain through the litigation (i.e., the removal of the bridge). Thus, in *Ward* and *Market Co.*, and like many other cases, the value of the litigation to the plaintiff was identical to the cost to the defendant. *See* Pet. Br. at 10 ("the recovery sought by the plaintiff usually equals the liability faced by the defendant" and citing authorities).

Accordingly, because this Court has historically valued the "object of the litigation" solely from the plaintiff's viewpoint, and because Congress has relied on this Court's precedent in establishing the requisite amount-in-controversy, the Court should reject Petitioners' invitation to adopt the "either viewpoint" rule when determining how to value the "object of the litigation" and explicitly reaffirm that the plaintiff's viewpoint is the only viewpoint relevant to the calculus.

2. The "paramount policy" of this Court is that plaintiff's complaint controls jurisdiction.

Expressly adopting a plaintiff viewpoint rule is consistent with the "paramount policy" of this Court that "the plaintiff is the master of the complaint,"[18] and the general rule governing dismissal for want of jurisdiction in cases brought in federal court is that "the sum claimed by the plaintiff controls if the claim is apparently made in good faith." *Saint Paul*, 303 U.S. at 288. Furthermore, taking the plaintiff's viewpoint and objective is consistent with the well-pleaded complaint rule[19] and the removal statute as "the status of the case as disclosed by the plaintiff's complaint is controlling in the case of a removal, since the defendant must file his petition before the time for answer or forever lose his right to remove." *Id.* at 291.[20] In fact, if on the face of the complaint, it is obvious to a court that a suit cannot involve the necessary amount, dismissal of the federal action is required. *Id.*[21] Accordingly, the Court should reaffirm the bright line test that the plaintiff's viewpoint determines jurisdiction.

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18. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99 (1987); *Healy v. Sea Gull Specialty Co.*, 237 U.S. 479, 480 (1915) (Holmes, J.).

19. This Court has long held that "the presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998) (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. at 392).

20. A defendant may remove a case only if the claim could have been brought in federal court. 28 U.S.C. § 1441(b). "Jurisdiction may not be sustained on a theory that the *plaintiff* has not advanced." *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 810 n.6 (1986) (emphasis added).

21. Certain *amici* suggest that so much emphasis on the plaintiff's perspective might unfairly prejudice defendants. Abiding

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Such "bright line" principles are basic to plaintiffs' long-established rights to decide "what jurisdiction [they] will appeal to," *Sea Gull*, 237 U.S. at 480, and "what law [they] will rely upon." *Merrell Dow*, 478 U.S. at 810 n.6. If a defendant, by merely recasting the complaint or adding allegations about the cost of the injunctive relief requested could defeat a plaintiff's choice of law or forum, then, in the words of this Court, "the plaintiff would be master of nothing." *Caterpillar*, 482 U.S. at 399; *see also Great Northern R. Co. v. Alexander*, 246 U.S. 276, 281 (1918) (jurisdiction is "to be determined by the allegations of the complaint . . . it cannot be made removable by any statement in the petition for removal or in subsequent pleadings by the defendant"). This is especially true in a case such as this one against two behemoth corporations that do business in all 50 states and across the globe, where any injunctive relief requested would realistically cost them in excess of $75,000 in administrative compliance costs regardless of the number of plaintiffs. *Brand Name*, 123 F.3d at 610 (noting "every case, however trivial, against a large company would cross the threshold, whether the threshold was $50,000 or as it now is $75,000, even if the plaintiff were asking for an injunction against disclosing his unlisted telephone number").

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by strict adherence to the complaint and the plaintiffs' objective in the litigation does not unfairly prejudice defendants. In most litigation a defendant can choose to become the plaintiff in the same controversy by invoking the Declaratory Judgment Act or a state's analog, choose the jurisdiction that they wish to be in, and the law that they wish to apply. In this case, had defendants attempted to take such an approach, they would have sought an order validating their alleged right to terminate the individual agreements between them and the putative class members and avoid payment of the rebates Plaintiffs allege they are owed. The "controversy" would remain the same, and the same amount of money would be at issue.

C. The Doctrine of *Stare Decisis* Militates Against Adopting the "Either Viewpoint" Rule.

As this Court has stated, *stare decisis* is "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991). "Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172-173 (1989).

Petitioners' request that the Court adopt the "either viewpoint" rule threatens to undermine, if not overrule, this Court's precedent interpreting the unambiguous provisions of the diversity statute. In short, Petitioners request that the Court value the "object of the litigation" differently than this Court has ever done. As discussed above, the relevant decisions of this Court have stood for decades and, more importantly, are the products of over 100 years of this Court's jurisprudence. These decisions also include the non-aggregation principle discussed below, which is equally impacted by Petitioners' request.

Other than increasing the amount-in-controversy threshold to establishing federal jurisdiction, the relevant text of the diversity statute and the scope of federal diversity jurisdiction have remained essentially unchanged by Congress since the statute was originally enacted. It is settled that "[t]he policy of the [diversity] statute calls for its strict construction. . . . Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction

to the precise limits which the statute has defined." *Healy*, 292 U.S. at 270; *Snyder*, 394 U.S. at 339-40. Indeed, Congress has understood the purpose of amount-in-controversy requirement as to preserve the proper role of state courts and to avoid the overburdening of federal courts. *See* Baker, *supra*, 102 F.R.D. at 302-18. Thus, without Congress acting to amend the diversity statute to adopt the "either viewpoint" rule or amend the non-aggregation principle, it would be inappropriate for this Court to revisit the holdings to expand federal jurisdiction where "Congress, with complete understanding of how the courts had construed the statute," has chosen not to. *Zahn*, 414 U.S. at 300-01; *Snyder*, 394 U.S. at 339-42.[22]

Admittedly, there may be valid policy reasons to consider the defendant's viewpoint in valuing the "object of the litigation" and Petitioners and *amici* more than adequately provide the Court with this discussion (*e.g.*, ensuring that the case is substantial, and help protect from bias, though it is fair to wonder just how biased Petitioners would be in any state as they do business in every state). However, this Court should not pronounce a new rule reinterpreting how to value the "object of the litigation" when that procedure has been long settled. *E.g.*, *Scott v. Frazier*, 253 U.S. at 244 ("It is well settled . . . amount in controversy must equal the jurisdictional sum as to each complainant.").

22. In fact, any change purporting to alter the definition of the "amount in controversy" would conflict with the command of Rule 82. *Snyder*, 394 U.S. at 337-38. The cases discussed in this brief for the most part predate the 1958 amendment to the diversity statute. Thus, Petitioners' discussion in note 4 of their brief is simply irrelevant as Congress is presumed to know the Court's interpretation of the statute, and when essentially left unchanged for over one hundred years, Congress is deemed to have ratified the Court's interpretation. *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978).

Furthermore, the Court should be leery of adopting Petitioners' request because that would open the federal courts to the hundreds, if not thousands, of state court actions filed across the country annually that pray for injunctive relief, especially when this Court has expressed its concern over the caseloads in federal court. *See* 1999 Year-End Report on the Federal Judiciary.[23] Indeed, the U.S. Department of Justice expressed its concern to Congress about the impact that the Class Action Fairness Act of 2000 would have had on the federal courts, stating: it "would flood the Federal courts with class action suits at a time when the Chief Justice, among others, has reportedly expressed serious concerns about the increasingly burdensome workload of the Federal court." Letter from Robert Raben, Asst. Attorney General, to Sen. Leahy, dated June 9, 2000, at 3, available at *www.citizen.org/documents/ACF219.PDF*. If the provisions of the Class Action Fairness Act caused the U.S. Department of Justice to note the "flood" of additional lawsuits the federal courts would be asked to hear, Petitioners' request to adopt the untethered "either viewpoint" rule would result in an absolute deluge of additional cases. If Congress chooses to, it can and should amend section 1332 to incorporate defendant's viewpoint. *See*, *e.g.*, *Conroy v. Aniskoff*, 507 U.S. 511, 528 (1993) (Scalia, J., concurring) ("The language of the statute is entirely clear, and if that is not what Congress meant then Congress has made a mistake and Congress will have to correct it.") However, this Court's precedent simply forecloses an interpretation of the "object of the litigation" that incorporates the defendant's viewpoint in valuing the amount-in-controversy. *See supra*.

Another reason that this Court should await Congressional action is that Congress is best suited to making the policy decisions implicated. For example, Congress should determine where to draw the line as to the "due regard" to be given to state

23. In 2001, the filings in the federal courts of appeal reached an all-time high at 57,464. Civil filings in 2001 were also substantial, totaling 258,517. 2001 Year-End Report on the Federal Judiciary.

governments and their courts. *See Shamrock Oil*, *Healy*, *supra*. Indeed, the Court should decline to adopt Petitioners' expansive interpretation of the diversity statute because it would invariably result in the "unnecessary federalization of traditional state court matters" at a time when the federal courts are burdened heavily already. 1999 Year-End Report on the Federal Judiciary (quoting Chief Justice Rehnquist).

Petitioners should take some solace from the fact that Congress may give them what they ask of this Court. Pending before Congress are S. 1712 and H.R. 2341 (the "Class Action Fairness Act of 2001").[24] These bills seek to amend 28 U.S.C. § 1332 to federalize class actions and modify the amount-in-controversy requirements. In fact, since at least 1998, Congress has been attempting to amend the diversity statute as applied to class actions because several legislators perceive, just as Petitioners do, the need to amend the diversity statute to undo the effect of this Court's holdings interpreting the amount-in-controversy provision and the non-aggregation principle so recently reaffirmed in *Snyder* and *Zahn*.[25] If enacted, the Class Action Fairness Act would establish the new rules of federal jurisdiction in class actions that Petitioners ask this Court to write but at a different *and higher* threshold, well above the present $75,000.[26]

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24. The fact that the Class Action Fairness Act is pending before Congress implicitly acknowledges that a case such as this one, where plaintiffs' state law claims are separate and distinct, cannot be aggregated or otherwise brought in federal court on the basis of diversity jurisdiction or through removal.

25. A similar bill, each one entitled "Class Action Fairness Act of [Year]", has been introduced in the House and Senate every year since 1998.

26. In relevant part, the Act would modify section 1332 to read:

> (d)(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy

(Cont'd)

In sum, because this Court has historically valued the "object of the litigation" from the plaintiff's viewpoint and has historically declared that to be the rule, this Court should not uproot its long-settled interpretation of the amount-in-controversy requirement to view the "object of the litigation" from the defendant's viewpoint. Instead, this Court should reaffirm its prior holdings and state clearly that the plaintiff's viewpoint controls the "object of the litigation," and defer to Congress the determination of whether diversity jurisdiction should be expanded.[27]

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> exceeds the sum or value of $2,000,000, exclusive of interest and costs, and is a class action in which —
>
> (A) any member of a class of plaintiffs is a citizen of a State different from any defendant;
>
> . . .
>
> (d)(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interests and costs.

Resp. App. at 16a-17a; 38a-39a.

The Act would also amend the removal statute to include a provision to make most orders remanding a class action to state court immediately appealable.

27. If the Court concludes that the "object of the litigation" here, *viewed solely from the plaintiff's perspective*, is merely the reinstitution of the Rebate Program in the *abstract*, including all of the attendant costs, and not Plaintiffs' subsequent use and monetary entitlements under the program which alone bring value to Plaintiffs' contractual rights, Plaintiffs concede that the amount-in-controversy

(Cont'd)

III. The "Object Of The Litigation" Here Cannot Exceed The Requisite Amount-In-Controversy Without Violating The Non-Aggregation Principle Applicable To Class Actions

The primary object of this litigation, as is uncontested, is for Plaintiffs to receive the benefit of the bargain of the Rebate Program that Ford and Citibank unlawfully terminated. That is, Plaintiffs seek the opportunity to accrue rebates and spend them on the purchase or lease of qualifying Ford vehicles, *viz.*, it is to *collect and use* their rebates. That right was valued at $3,500 — at most — for any one plaintiff. J.A. 95, 113. Thus, because the "object of the litigation" was valued at no more than $3,500 per plaintiff, in accordance with non-aggregation principle applicable to class actions, this case does not meet the jurisdictional threshold on the facts. To find jurisdiction under the diversity statute under these facts would require this Court to overrule *Snyder* and *Zahn* and over 100 years of precedent.

A. The Non-Aggregation Principle and Its Strict Application.

According to the traditional interpretation of the diversity statute, the non-aggregation principle holds that the "separate and distinct claims of two or more plaintiffs cannot be aggregated in order to satisfy the jurisdictional amount requirement." The only time aggregation is permitted in multi-plaintiff cases is where "two or more plaintiffs unite *to enforce a single title or right in which they have a common and undivided interest*." *Snyder*, 394 U.S. at 335 (emphasis

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requirement is satisfied. However, Plaintiffs' allege that the "object of the litigation" is more than the reinstatement of the program in the abstract, as it is only the *use* of the program and redemption of the rebates that brings value to Plaintiffs' rights.

added); *see also Zahn*, 414 U.S. at 295-96 (same); *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 588-89 (1939) (same); *Wheless*, 180 U.S. at 382 (same); *Clay v. Field*, 138 U.S. 464, 479 (1891) (same); *Russell v. Stansell*, 105 U.S. at 304 (same); *Oliver v. Alexander*, 31 U.S. (6 Pet.) 143, 145-47 (1832) (same). The non-aggregation principle equally applies in multi-defendant cases. *Walter v. Northeastern R. Co.*, 147 U.S. 370, 373-74 (1893). Thus, no plaintiff or defendant may enter federal court by "rid[ing] on another's coattails." *Zahn*, 414 U.S. at 301.

The non-aggregation principle is applied strictly.

> Indeed, so strictly has it been applied, that, in cases where, although the entire matter in dispute in the suit exceeds in value the jurisdictional limit, nevertheless, if there are several and separate interests in that sum, belonging to distinct parties, and constituting distinct causes of action, although actually united in one suit and growing out of the same transaction, the jurisdiction of the court has been constantly denied.

Elgin v. Marshall, 106 U.S. (16 Otto.) 578, 582 (1882). The strict construction is demanded even where plaintiffs allege a "common and undivided" interest. *See, e.g., Thomson*, 315 U.S. at 446 (dismissing for want of jurisdiction where the record failed to contain the contracts upon which plaintiffs' allegedly "common and undivided" claims were brought).

B. Plaintiffs' Claims Are Separate and Distinct; the Claims Cannot Be Aggregated.

Petitioners concede that plaintiffs' claims are separate and distinct. J.A. 113, 117. Thus, plaintiffs have no *single title or right* in which they share a common and undivided

interest. However, Petitioners contends that the relief sought, in particular reinstitution of the Rebate Program, is common and undivided and thus its value to Plaintiffs may be aggregated to meet the jurisdictional threshold even while conceding that plaintiffs do not have a united title or right to the relief requested. Pet. Br. at 26-31. Petitioners misapprehend the non-aggregation principle.

By its very terms, the non-aggregation principle only applies to claims, i.e., the "*single titles or rights*" in which the parties share a common and undivided interest that one or more plaintiffs seek to protect. It does not apply to the relief requested, no matter how "common and undivided" that interest may be. *Snyder*, 394 U.S. at 336-37; *Clark*, 306 U.S. at 588; *Saint Paul*, 303 U.S. at 294 ("[t]he claim, whether well or ill founded in fact, fixes the right of the defendant to remove"); *Gibson*, 122 U.S. at 30 ("the test is whether they claim it under *one common right* . . . or claim it under separate and distinct rights") (emphasis added); *Oliver*, 31 U.S. at 146 ("If the cause of action is several, the suit must be several also."); *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1264 (11th Cir. 2000) ("For amount in controversy purposes, however, it is the nature of the right asserted, not that of the relief requested, that determines whether the claims of multiple plaintiffs may be aggregated"); *Del Vecchio v. Conseco, Inc.*, 230 F.3d 974, 977-78 (7th Cir. 2000) (noting that remedy sought, seeking imposition of constructive trust, does not convert claims of putative class members entitled to their own separate recovery into common and undivided interest); *Gilman v. BHC Sec.*, 104 F.3d 1418, 1422-24 (2d Cir. 1997) (discussing the non-aggregation principle and focusing on the rights to be protected); *Snow*, 561 F.2d at 790 (9th Cir.) ("the proper focus . . . is not influenced by the type of relief requested, but rather continues to depend upon the nature and value of the right asserted,"

(i.e., the object of the litigation)); *Alvarez v. Pan American Life Ins. Co.*, 375 F.2d 992, 993-94 (5th Cir. 1967) (holding class conversion and contract claims are separate and distinct even though relief sought was class-wide and not individual).

Here, it is uncontested that Plaintiffs' claims and causes of action are separate and distinct. J.A. 113, 117. Indeed, the contracts at issue do not grant any plaintiff any interest, title, or right in any other plaintiff's contract. Moreover, because Plaintiffs' *claims* are separate and distinct, each class member will be owed a separate rebate amount and damages, assuming that the lawsuit is successful.[28] Accordingly, aggregating Plaintiffs' *claims* would violate the non-aggregation principle.

Additionally, the district found that "[t]he injunctive relief sought . . . is simply a means to vindicate each plaintiff's separate and individual claim for accrual of rebates for five years." J.A. 96. Consequently, if the Court were to accept Petitioners' argument that simply by virtue of including a request for injunctive relief, separate and distinct claims, which cannot be aggregated to obtain federal jurisdiction, could suddenly be bootstrapped into federal court. This result would "undermine the principles of *Snyder* and *Zahn*." J.A. 96-97. Thus, because the separate value of the lawsuit to each plaintiff is less than $75,000, this case

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28. Petitioners suggest that they have no interest in how the damages of this suit are apportioned or what rebates are owed to each plaintiff and class member. Pet. Br. at 27-28. This contention seems incongruous with the purpose of the lawsuit, which is to enforce the contractual right to the rebate and give each class member his or her separate opportunity to cash this right in on the purchase or lease of a qualifying Ford vehicle. *See supra.* And, as Petitioners acknowledge, the value of this right is dependant on cardholder usage. Pet. Br. at 28; *see also* J.A. 53-54, 87-88.

cannot meet the requirements for jurisdiction without running afoul of the non-aggregation principle.

Even under the "either viewpoint" rule, obtaining federal jurisdiction in this case requires aggregation. Although Petitioners contend that the business cost of reinstating the Rebate Program, even for one plaintiff, exceeds the $75,000 threshold, the district court found that Petitioners failed to prove this jurisdictional fact. J.A. 97. The district court did so for a good, but albeit, unstated reason: the evidence in the record simply fails to support Petitioners. Because there are multiple defendants, neither defendant can ride the coattails of the other to assert federal jurisdiction. Here, even if the Court were to conclude that the "object of the litigation" is more than $75,000 per plaintiff, the evidence in the record[29] about the costs of administering the Rebate Program fails to prove that Ford would incur costs or liabilities more than $75,000 per plaintiff. In fact, not only have Petitioners failed to include a copy of the Ford-Citibank contract which might permit a court to determine if they have a "common and undivided" interest in the Rebate Program, *see Thomson*, 315 U.S. at 446, but they have also submitted evidence that the costs of the program are not shared equally. Indeed, according to the record, Citibank shoulders the administrative costs of the program while Ford provides the rebate credits, J.A. 87-88, which can be no more than $3,500 per plaintiff. J.A. 95, 113. Thus, even accepting Petitioners' argument that the costs of implementing Rebate Program count toward valuing the amount-in-controversy, this case would run afoul of the non-aggregation principle because the costs to Ford must be aggregated to exceed the jurisdictional threshold. Stated otherwise, even if the defendant's viewpoint is considered and jurisdiction is tested by "the cost to each defendant of

29. The Court is limited to the record in assessing whether the jurisdictional amount is sufficient. *Thomson*, 315 U.S. at 446.

an injunction running in favor of one plaintiff,"[30] finding jurisdiction here violates the non-aggregation principle because the cost to Ford is at most $3,500 per plaintiff. Accordingly, the district court's finding that Petitioners failed to meet their burden under the "either viewpoint" rule should be upheld. J.A. 97.

C. The "Either Viewpoint" Rule Does Not Provide an Exception to the Non-Aggregation Principle.

Every court expressly adopting the "either viewpoint" rule has held that it is limited by the non-aggregation principle articulated in *Snyder* and *Zahn*. *See, e.g.*, *Brand Name*, 123 F.3d at 609-10. Thus, every court must value the "object of the litigation" without aggregating "separate and distinct" claims. Petitioners' request that this Court recognize administrative compliance costs as part of the value of the "object of the litigation" is tantamount to rewriting the non-aggregation principle to include an exception that would swallow the rule. Respectfully, such costs should simply be deemed collateral to the "object of the litigation" and thus irrelevant to the jurisdictional calculation. *See Ross*, *supra*. Alternatively, this Court should uphold the Ninth Circuit's ruling that such costs are, as a matter of law, excluded from the amount-in-controversy as this will adhere to the purpose of the non-aggregation principle and limit federal jurisdiction.

No court under any approach has accepted the argument that ministerial or administrative business costs of compliance with an injunction satisfy the amount-in-controversy requirement. Just like the panel below, in *Brand Name*, Judge Posner specifically emphasized that if such an argument were accepted, "then every case, however trivial, against a large company would cross the threshold." 123 F.3d at 610. For example, although Petitioners contend otherwise,

30. *Brand Name*, 123 F.3d at 610.

see Pet. Br. at 23, *Snow v. Ford* would be removable under the rule Petitioners ask this Court to adopt. *Snow v. Ford Motor Co.*, 561 F.2d 787 (9th Cir. 1977).

In *Snow*, the plaintiff filed suit in state court seeking damages and an injunction against Ford from continuing to sell trailering special packages without a wiring connector kit. Like the present case, Ford removed and argued that the requisite amount-in-controversy was met because of the business right Snow sought to enjoin, as it would affect all of Ford's future sales and impose substantial costs on Ford. *Id.* at 790. The court disagreed, as the injury Ford allegedly caused each plaintiff and putative class member was $11. According to the court, this was the nature and value of the right asserted, it was not the administrative business expenses Ford would incur. *Id.* However, including the administrative costs that a business would incur in complying with an injunction when making the amount-in-controversy determination, including those in *Snow*, would easily bring such cases into federal court. Indeed, simply the cost of duplicating and disseminating such an order within a large corporation alone might exceed the jurisdictional threshold. *See Brand Name*, 123 F.3d at 610.

If Petitioners' request to include these administrative costs in valuing the "object of the litigation" were adopted in full, the kinds of cases suddenly capable of being brought in federal court would not simply be limited to multi-party cases either. Indeed, if such administrative compliance costs were considered, there would be nothing to stop large corporate defendants from removing every diversity case seeking an injunction to federal court, and thereby render plaintiffs "master of nothing." *Caterpillar*, 482 U.S. at 399. Nor would there be anything to stop plaintiffs from accessing the federal courts if all any diverse plaintiff had to do was pray for injunctive relief. *Snow*, 561 F.2d at 791. In short, adoption of the "either viewpoint" rule would blow the federal courthouse doors wide open. Thus, even

if the Court accepts Petitioners' argument that defendants' viewpoint matters in valuing the amount-in-controversy, this Court should uphold the panel's ruling that administrative compliance costs of the nature involved here, as a matter of law, cannot be included in the jurisdictional calculus.

Fundamentally, there is little reason to include these kinds of compliance costs in any event. These business costs are simply not the kind of business costs that courts would consider even under the "either viewpoint" approach. Pre-litigation, the Petitioners had the Rebate Program in place, the business apparatus had been designed, employees had been hired, and the Rebate Program was operational. The injunction requested, at the time the suit was filed, was simply to keep the business practice going as a means to compensate Plaintiffs for the damages suffered. J.A. 95-96. It was not as though the injunction requested Ford or Citibank to design a new program or create a new product and thus substantially alter their business practices. *See, e.g., In re Microsoft Corp. Antitrust Litig.*, 127 F. Supp. 2d 702, 718-19 (D. Md. 2001) (noting the value of the litigation (i.e., creating a Windows operating system untied from the Internet Explorer) would cost more than $58 million to create). Instead, the injunction requested would simply have maintained the business practice that Petitioners established until each plaintiff had been paid up to $3,500 in value, which is exactly what Plaintiffs bargained for in signing up for the co-branded credit card.

In sum, adoption of the "either viewpoint" rule would open the courthouse doors to every large corporation whenever any diverse plaintiff (or plaintiffs) sues them and seeks injunctive relief. Moreover, it would permit any diverse plaintiff to assert federal against a large corporation jurisdiction simply by including a prayer for injunctive relief. The "either viewpoint" rule thus subverts the non-aggregation

principle entirely. Moreover, as emphasized already, expansions of federal jurisdiction are not the province of this Court; they are Congress's responsibility. And, adoption of the "either viewpoint" rule would expand diversity jurisdiction in a manner inconsistent with the settled interpretations and policies of the diversity statute and *Snyder* and *Zahn*. Accordingly, the Court should reject Petitioners' invitation.[31]

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31. Plaintiffs would be remiss if they ignored several of the *amici*'s contention that state courts are somehow beholden to plaintiff's lawyers or incapable of handling class actions. The state court judges who are elected are beholden to the electorate, as is any elected official. Over the years they have proven exceptionally capable jurists. And, though some state courts may have fewer resources at their disposal than the federal courts, this fact does not equate with a lesser form of justice. State courts seek to do justice and work diligently at it. Moreover, both state and federal judges are capable of committing errors with the resources they have.

CONCLUSION

For the reasons explained above, the judgment should be affirmed.

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